

1 Dawn Newton, Cal. State Bar. No. 209002  
dnewton@donahue.com  
2 Eric A. Handler, Cal. State Bar No. 224637  
ehandler@donahue.com  
3 Padmini Cheruvu, Cal. State Bar No. 301292  
pcheruvu@donahue.com  
4 DONAHUE FITZGERALD LLP  
Attorneys at Law  
5 1999 Harrison Street, 25th Floor  
Oakland, California 94612-3520  
6 Telephone: (510) 451-3300  
Facsimile: (510) 451-1527  
7

8 Attorneys for Plaintiffs  
SAFARI KID INC. and SAFARI  
KID FRANCHISING LLC  
9

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12

13 SAFARI KID INC., a California  
corporation; and SAFARI KID  
14 FRANCHISING LLC, a California limited  
liability company,

15 Plaintiffs,

16 v.

17 MAHZAD IRANI, an individual;  
18 FERADOON IRANI, an individual; NESS  
ENTERPRISE, LLC, a California limited  
19 liability company; and DOES 1-10,  
inclusive,

20 Defendants.  
21

Case No.

**COMPLAINT FOR DAMAGES AND  
INJUNCTION**

1. Trademark Infringement
2. False Designation of Origin
3. Cyberpiracy
4. Unfair Competition
5. Misappropriation of Trade Secrets
6. Breach of Oral Contract
7. Fraud

**DEMAND FOR A JURY TRIAL**

1 Plaintiffs Safari Kid, Inc. ("SKI") and Safari Kid Franchising, LLC ("SKF," and together  
 2 with SKI, "**Plaintiffs**") state and allege for their complaint against defendants Mahzad Irani ("**Ms.**  
 3 **Irani**"), Feradoon Irani ("**Mr. Irani**," and together with Ms. Irani, the "**Iranis**"), Ness Enterprise,  
 4 LLC ("**Ness**"), and Does 1 through 10, inclusive, (together, the "**Does**", and together with the  
 5 Iranis and Ness, "**Defendants**") as follows.

## 6 **PARTIES, JURISDICTION, AND VENUE**

### 7 **Parties**

8 1. SKI is a California corporation with its principal place of business in Newark,  
 9 California.

10 2. SKF is a California limited liability company with its principal place of business in  
 11 Newark California.

12 3. Plaintiffs are informed and believe, and based thereon allege, that at all times  
 13 relevant hereto the Iranis have been and are individuals residing in California and doing business  
 14 throughout California, including in the Northern District of California.

15 4. Plaintiffs are informed and believe, and based thereon allege, that at all times  
 16 relevant hereto Ness has been and is a California limited liability company conducting business  
 17 throughout California, including in the Northern District of California.

18 5. Plaintiffs are informed and believe, and based thereon allege, that the Does are  
 19 entities or individuals subject to the Court's jurisdiction. The true names and capacities, whether  
 20 individual, corporate, associate, or otherwise, of the Does are unknown to Plaintiffs, who  
 21 therefore sue the Does, and each of them, by such fictitious names, and Plaintiffs will seek leave  
 22 of the Court to amend this Complaint to allege such true names and capacities when the same are  
 23 ascertained.

24 6. Plaintiffs are informed and believe, and based thereon allege, that each of the  
 25 Defendants was the agent, employee, and/or alter-ego of each of the other remaining Defendants  
 26 and, at all times relevant hereto, acted within the course and scope of such agency and/or  
 27 employment.

28 ///

**Jurisdiction**

7. The Court has subject matter jurisdiction over this action under 15 U.S.C. §§ 1121 and 1125(d) (trademark claims), 28 U.S.C. § 1331 (federal subject matter jurisdiction), 28 U.S.C. §§ 1338(a) (trademark actions) and (b) (unfair competition claim joined with a substantial and related trademark claim), and 28 U.S.C. § 1367(a) (supplemental jurisdiction over state law claims for misappropriation of trade secrets, breach of oral contract, and fraud). This civil action includes counts for infringement of a trademark under section 43(a) of the Lanham Act, false designation of origin under section 43(a) of the Lanham Act, violation of the Anti-Cybersquatting Consumer Protection Act, unfair competition as joined with a substantial and related trademark claim, and claims under California state law for misappropriation of trade secrets, breach of an oral contract, and fraud.

8. Plaintiffs are informed and believe, and based thereon allege, that the Court has personal jurisdiction over: (a) the Iranis because they each reside in California and have done substantial business in the Northern District of California; and (b) Ness because it is organized under California law and has engaged in sales of goods and services throughout California, including without limitation in the Northern District of California.

9. Plaintiffs are informed and believe, and based thereon allege, that the Court has personal jurisdiction over Defendants because at all times relevant hereto Defendants knew, or reasonably should have known, that: (a) Plaintiffs are located in California and, specifically, have their principal place of business in the Northern District of California; (b) Defendants directed and aimed their alleged unauthorized activities at Plaintiffs, which are each located in the Northern District of California; and (c) Plaintiffs would likely suffer the brunt of the harm caused by Defendants in California at Plaintiffs' principal places of business. The acts and omissions of Defendants alleged herein caused Plaintiffs to bear the brunt of the harm in California at their principal place of business in Newark, California within this District.

**Venue**

10. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c).

///

**Intradistrict Assignment**

11. Because this matter is an Intellectual Property Action, there is no basis for assignment to a particular location or division of the Court pursuant to Civil L.R. 3-2(c).

**GENERAL ALLEGATIONS**

12. Since 2005, and in connection with its substantial commercial use of the SAFARI KID mark, SKI has owned and operated learning centers for young children offering preschool and after school programs for children as young as twenty-four months old and as old as elementary school age.

13. By 2010, SKI had three locations and its owners and founders, Deepak and Shahdokth Mudakavi (together, the "**Mudakavis**"), had formed SFK for the purpose of franchising the SAFARI KID brand. In 2011, the first four franchise locations opened and by December 31, 2014, the SAFARI KID system had eighteen operating units in California.

14. The SAFARI KID mark is inherently distinctive, or has developed secondary meaning, such that its primary significance is that it has become known by the consuming public as a source indicator for Plaintiffs' products and services.

15. In early 2013, the Iranis contacted the Mudakavis and asked if the Iranis could open a SAFARI KID franchise. At the time the Iranis resided in Canada, and they represented to the Mudakavis that they were hoping to move to the United States and wanted to open a SAFARI KID learning center in San Diego, California.

16. In response to the Iranis' inquiry, SKF provided the Iranis with its Franchise Disclosure Document. The Iranis then wrote to SKF and therein represented that they had reviewed the Franchise Disclosure Document and were ready to move to California and start a SAFARI KID learning center once they got their finances in order. Based on those representations, SKF agreed to sell a SAFARI KID franchise to the Iranis to be operated in San Diego, California.

17. The Iranis kept in touch with SKF during their immigration process. Ms. Irani made several trips to California during which she visited SAFARI KID learning centers in Northern California, scouted locations for establishing a SAFARI KID learning center in San

1 Diego, California, asked SKF representatives to visit particular locations in San Diego, California  
2 that could be leased for use as a SAFARI KID learning center and to speak with the landlords of  
3 the same, and attended part of the SAFARI KID franchisee training program conducted by SKF  
4 in the Northern District of California.

5 18. In reliance on the Iranis' representations that they were getting ready to open a  
6 SAFARI KID learning center pursuant to all terms of the SAFARI KID franchise system, SKF  
7 provided the Iranis with the standard SAFARI KID system training it provides to all SAFARI  
8 KID franchisees consisting of, among other things: (a) ten days of training covering all aspects of  
9 how to operate the business; and (b) substantial proprietary operational information of Plaintiffs.  
10 In addition, SKF provided the Iranis with a complete copy of its Operations Manuals containing  
11 detailed information about how to run a SAFARI KID learning center, including without  
12 limitation classroom curricula, methods of teaching, methods of promoting the learning center  
13 and increasing enrollment, and other internal techniques and know-how for increasing and  
14 retaining child enrollments, all of which Plaintiffs maintain within their SAFARI KID system as  
15 highly confidential and proprietary information and which Plaintiffs do not disclose outside of  
16 their SAFARI KID system.

17 19. SKF also: (a) provided the Iranis with additional training at other times, including  
18 without limitation permitting the Iranis to attend a 2014 open house event at which the Iranis had  
19 access to teacher information; (b) gave teacher training to Ms. Irani in January 2015; and (c)  
20 permitted Ms. Irani to record SKI owner and co-founder Shahdokth Mudakavi teaching on  
21 several occasions.

22 20. In or about April 2014, the Iranis identified a location for their SAFARI KID  
23 learning center in San Diego, California. They provided notice to SKF along with a request for  
24 approval of said location, consistent with the requirements of the SKF franchise agreement. SKF  
25 reviewed the location and approved it, and in or about June 2014, the Iranis executed a lease for  
26 that location.

27 21. SKF provided substantial support to the Iranis during their lease review process,  
28 build out of the leased site, and planning for the grand opening of their SAFARI KID location. In

1 advance of the opening of the Iranis' SAFARI KID location, SKF: (a) identified the Iranis'  
2 SAFARI KID location on the webpage of SKF's website wherein SKF identifies all authorized  
3 Safari Kid locations; and (b) provided the Iranis with support and advice regarding their opening.

4 22. Although SKF asked the Iranis to sign the SKF franchise agreement, which  
5 required payment to SKF of \$50,000 (the "Initial Fee"), the Iranis delayed repeatedly until they  
6 finally agreed to meet with SKF to sign the SKF franchise agreement in January 2015. At that  
7 meeting, the Iranis said they would sign the contract but could not afford to pay the Initial Fee.  
8 They had already begun construction of their SAFARI KID learning center and said they could  
9 not afford to pay for both the construction and the Initial Fee at the same time. They asked SKF  
10 for more time to pay the Initial Fee, and, in reliance on the Iranis' representations, SKF agreed to  
11 give them six months to do so. Despite this accommodation, the Iranis never signed the SKF  
12 franchise agreement.

13 23. In early 2015, the Iranis opened their learning center under the name "Safari Kid."  
14 That same month, the Iranis began advertising their "Safari Kid" learning center using the  
15 safarikidschool.com domain name, which the Iranis had registered despite their knowledge of the  
16 prohibition in the SKF franchise agreement on registering any domain name containing the  
17 SAFARI KID mark.

18 24. Shortly thereafter, SKF against requested that the Iranis sign the SKF franchise  
19 agreement, pay the Initial Fee to SKF, and begin paying royalties to SKF as required under the  
20 SKF franchise agreement. Once again the Iranis refused, claiming for the first time that they were  
21 not franchisees in the SAFARI KID system.

22 25. Plaintiffs are informed and believe, and based thereon allege, that within weeks  
23 after the Iranis opened their "Safari Kid" location, they had enrolled between fifteen and eighteen  
24 students at their learning center.

25 On or about September 10, 2015, following demands by SKF to the Iranis to comply with the  
26 SAFARI KID franchise requirements and the SKF franchise agreement, the Iranis changed the  
27 name of their learning center to "Dot to Dot" and stopped using the safarikidschool.com domain  
28 name. As of the date of this Complaint: (a) third party advertising, including without limitation on

the yelp.com and yellowpages.com websites, still refers to the Iranis' business as "Safari Kid"; (b) the Iranis continue to own the safarikidschool.com domain name; and (c) the Iranis remain in possession of proprietary, confidential, and trade secret materials owned by Plaintiffs and relating to the operation of a SAFARI KID learning center.

26. The Iranis have failed and refused to report the revenues of their business to SKF and, to date, have not paid any monies to SKF. The Iranis continue to own and operate their learning center offering daycare, preschool, and after school programs from the same premises that initially operated as a SAFARI KID learning center. Plaintiffs are informed and believe, and based thereon allege, that the Iranis continue to provide services to many of the same enrolled children and families who initially enrolled with the Iranis' business when it was operated as a SAFARI KID facility in connection with the SAFARI KID mark.

### **FIRST CLAIM FOR RELIEF**

#### **Trademark Infringement Under The Lanham Act, 35 U.S.C. §1125(a)**

#### **(By Plaintiffs Against All Defendants)**

27. Plaintiffs reallege and incorporate herein by this reference the allegations of paragraphs 1 through 26 above as though fully set forth below.

28. The SAFARI KID mark is a valid, protectable mark owned by Plaintiffs, and the primary significance of which is that it known by the consuming public as a source indicator for Plaintiffs' products and services.

29. Defendants' unauthorized use of the SAFARI KID mark in connection with a preschool and daycare center is confusingly similar to the use of Plaintiffs' SAFARI KID mark for identical purposes. The use by Plaintiffs and their authorized franchisees, on the one hand, and by Defendants, on the other hand, of the SAFARI KID mark is aimed at the same class of consumer, namely, parents and guardians of young children.

30. Defendants' unauthorized use of the SAFARI KID mark is likely to cause confusion, to cause mistake, or to deceive consumers into falsely believing that Defendants' business is related to Plaintiffs' business, and/or that Defendants' business is in some way sponsored by or connected or affiliated with Plaintiffs or the services of Plaintiffs' franchise

1 system within the meaning of 15 U.S.C. § 1125.

2 31. Plaintiffs are informed and believe, and based thereon allege, that Defendants  
3 knew, or should have known, of Plaintiffs' rights to the SAFARI KID mark, and that Defendants'  
4 unauthorized adoption and continued use of Plaintiffs' SAFARI KID mark was knowing, willful,  
5 deliberate, and done with the intention of trading upon the goodwill built up by Plaintiffs and  
6 their SAFARI KID franchise system. Defendants' actions and omissions make this an exceptional  
7 case within the meaning of 15 U.S.C. § 1117.

8 32. Defendants' unauthorized use of the SAFARI KID mark has caused, and unless  
9 restrained and enjoined by this Court will continue to cause, substantial, immediate, and  
10 irreparable injury to Plaintiffs' business, reputation, and goodwill for which Plaintiffs are without  
11 an adequate remedy at law. Plaintiffs are therefore entitled to injunctive relief as against  
12 Defendants in connection with said unauthorized use.

13 33. As a direct and proximate result of Defendants' unauthorized adoption and  
14 continued use of Plaintiffs' SAFARI KID mark, Plaintiffs have suffered and are continuing to  
15 suffer injury, loss, and damages in an amount to be proven at trial. Based on such conduct,  
16 Plaintiffs are entitled to injunctive relief, monetary damages, and other remedies provided by  
17 Sections 1116, 1117, and 1118 of the Lanham Act, including Defendants' profits, treble damages,  
18 reasonable attorneys' fees, costs, and prejudgment interest.

19 WHEREFORE, Plaintiffs seek relief against Defendants as set forth below.

20 **SECOND CLAIM FOR RELIEF**

21 **False Designation of Origin Under The Lanham Act, 15 U.S.C. § 1125(a)**

22 **(By Plaintiffs Against All Defendants)**

23 34. Plaintiffs reallege and incorporate herein by this reference the allegations of  
24 paragraphs 1 through 26 above as though fully set forth below.

25 35. Defendants' unauthorized use of the SAFARI KID mark constitutes false  
26 designation of origin, false or misleading description, and/or false or misleading representation.

27 36. Defendants' unauthorized use of the SAFARI KID mark so resembles Plaintiffs'  
28 identical SAFARI KID mark used in connection with the same or related services as to be likely

1 to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or  
2 association of Defendants with Plaintiffs, and as to origin, sponsorship, or approval of  
3 Defendants' services and other commercial activity within the meaning of 15 U.S.C. § 1125(a).

4 37. Such false designation, description, and/or representation by Defendants  
5 constitutes unfair competition and is an infringement of Plaintiffs' rights in their SAFARI KID  
6 mark in violation of the Lanham Act, 15 U.S.C. § 1125(a).

7 38. Plaintiffs are informed and believe, and based thereon allege, that at all relevant  
8 times Defendants knew, or should have known, of Plaintiffs' rights in and to the SAFARI KID  
9 mark and that said trademark is a source indicator of Plaintiffs' products and services, and  
10 Defendants' false description, false representation, and false designation of origin were knowing,  
11 willful, and deliberate, making this an exceptional case within the meaning of 15 U.S.C. § 1117.

12 39. By the direct diversion of customers, and the lessening of goodwill associated with  
13 Plaintiffs' franchise system conducted in connection with the SAFARI KID mark, Plaintiffs have  
14 been injured as a result of Defendants' false and misleading advertisement, promotion, and use of  
15 the SAFARI KID mark.

16 40. Defendants' unauthorized use of the SAFARI KID mark has caused, and unless  
17 restrained and enjoined by this Court will continue to cause, substantial, immediate, and  
18 irreparable injury to Plaintiffs' business, reputation, and goodwill for which Plaintiffs are without  
19 an adequate remedy at law.

20 41. As a direct and proximate result of Defendants' unauthorized adoption and  
21 continued use of Plaintiffs' SAFARI KID mark, Plaintiffs have suffered, and are continuing to  
22 suffer, injury, loss, and damages in an amount to be proven at trial. Based on the actions and  
23 omissions of Defendants, Plaintiffs are entitled to injunctive relief, monetary damages, and other  
24 remedies provided by Sections 1116, 1117, and 1118 of the Lanham Act, including Defendants'  
25 profits, treble damages, reasonable attorneys' fees, costs, and prejudgment interest.

26 WHEREFORE, Plaintiffs seek relief against Defendants as set forth below.

27 ///

28 ///

**THIRD CLAIM FOR RELIEF**

**Cyberpiracy Under The Anticybersquatting Consumer Protection Act (ACPA),**

**Lanham Act 15 U.S.C. § 1125(d)**

**(By Plaintiffs Against All Defendants)**

42. Plaintiffs reallege and incorporate herein by this reference the allegations of paragraphs 1 through 26 above as though fully set forth below.

43. The safarikidschool.com domain name, which wholly contains and incorporates Plaintiffs' SAFARI KID mark, is confusingly similar to the SAFARI KID mark and to the safarikidusa.com domain name owned and used by Plaintiffs.

44. Defendants registered and used, without Plaintiffs' authorization, the infringing safarikidschool.com domain name despite the provisions in the SKF franchise agreement prohibiting Defendants from registering any domain name containing the SAFARI KID mark.

45. Plaintiffs are informed and believe, and based thereon allege, that Defendants registered and used the infringing safarikidschool.com domain name with the bad faith intent of causing harm to Plaintiffs and their SAFARI KID brand and of profiting unlawfully from Plaintiffs' SAFARI KID mark by using the same to call attention to and promote Defendants' goods and services.

46. Plaintiffs are informed and believe, and based thereon allege, that Defendants registered and used the infringing safarikidschool.com domain name with the intent to divert customers from Plaintiffs' business to Defendants' business and with the bad faith intent to harm Plaintiffs' goodwill and to profit from Plaintiffs' SAFARI KID mark by creating a likelihood of confusion within the meaning of 15 U.S.C. § 1125(d) as to source, sponsorship, affiliation, or endorsement of Defendants' website to which the infringing safarikidschool.com domain name has resolved.

47. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew, or should have known, of Plaintiffs' rights in the SAFARI KID mark and Plaintiffs' ownership and use of the very similar safarikidusa.com domain name, and Defendants' violation of Plaintiffs' rights was knowing, willful, and deliberate, making this an exceptional case within

1 the meaning of 15 U.S.C. § 1117.

2 48. Defendants' actions and omissions constitute cyberpiracy in violation of 15 U.S.C.  
3 § 1125(d).

4 49. Defendants' unauthorized registration and use of the infringing  
5 safarikidschool.com domain name has injured, and unless immediately restrained will continue to  
6 injure, Plaintiffs and the goodwill associated with Plaintiffs' SAFARI KID mark and Plaintiffs'  
7 safarikidusa.com domain name.

8 50. As a direct and proximate result of Defendants' unauthorized adoption and  
9 continued use of Plaintiffs' SAFARI KID mark, Plaintiffs have suffered and are continuing to  
10 suffer injury, loss, and damages in an amount according to proof. Because of Defendants' actions  
11 and omissions, Plaintiffs are entitled to injunctive relief as well as either statutory damages under  
12 15 U.S.C. § 1117(d) or Defendants' profits and treble damages pursuant to 15 U.S.C. § 1117(a),  
13 reasonable attorneys' fees, costs, and prejudgment interest.

14 WHEREFORE, Plaintiffs seek relief against Defendants as set forth below.

15 **FOURTH CLAIM FOR RELIEF**

16 **Unfair Competition Under California Common Law and**  
17 **California Business & Professions Code § 17200, *et seq.***

18 **(By Plaintiffs Against All Defendants)**

19 51. Plaintiffs reallege and incorporate herein by this reference the allegations of  
20 paragraphs 1 through 26 above as though fully set forth below.

21 52. Defendants' unauthorized and continued use of the SAFARI KID mark as  
22 Defendants' alleged service mark in connection with preschool and daycare services constitutes  
23 unlawful, unfair, and/or fraudulent business acts or practices in violation of California common  
24 law and California Business and Professions Code § 17200, *et seq.*

25 53. By virtue of the wrongful actions and omissions alleged herein, Defendants  
26 engaged in, and continue to engage in, unlawful, unfair, and/or fraudulent business practices  
27 against Plaintiffs in violation of California Business and Professions Code § 17200, *et seq.*

28 54. Defendants' unauthorized adoption and use of the SAFARI KID mark has caused,

1 and unless restrained and enjoined by this Court will continue to cause, substantial, immediate,  
2 and irreparable injury to Plaintiffs' business, reputation, and goodwill.

3 55. As a direct and proximate result of Defendants' unauthorized adoption and  
4 continued use of Plaintiffs' SAFARI KID mark, Defendants have unfairly benefitted from their  
5 wrongful actions and omissions and Plaintiffs have suffered, and are continuing to suffer, injury,  
6 loss, and damages in an amount according to proof. Because of Defendants' actions and  
7 omissions, Plaintiffs are entitled to remedies available under California Business and Professions  
8 Code § 17200, including without limitation injunctive relief and restoration of money acquired by  
9 Defendants' wrongful conduct.

10 WHEREFORE, Plaintiffs seek relief against Defendants as set forth below.

11 **FIFTH CLAIM FOR RELIEF**

12 **Misappropriation of Trade Secrets Under the California Uniform Trade Secrets Act**

13 **(By Plaintiffs Against All Defendants)**

14 56. Plaintiffs reallege and incorporate herein by this reference the allegations of  
15 paragraphs 1 through 26 above as though fully set forth below.

16 57. At all relevant times Plaintiffs have owned and been in possession of trade secrets  
17 (together, the "**Trade Secrets**"), including without limitation: (a) the standard SAFARI KID  
18 system training provided to all SAFARI KID franchisees and consisting of ten days of training on  
19 all aspects of how to operate the business; (b) the SAFARI KID Operations Manuals containing  
20 information about how to run a SAFARI KID learning center, including without limitation  
21 classroom curricula, methods of teaching, methods of promoting the learning center and  
22 increasing enrollment, and other internal techniques and know-how for increasing and retaining  
23 child enrollments; and (c) teaching information and training provided to SAFARI KID  
24 franchisees.

25 58. At all relevant times Plaintiffs' Trade Secrets had and still have economic value in  
26 that the use of the same creates the conditions for the successful acquisition and retention of  
27 students at SAFARI KID franchises. Plaintiffs have taken and continue to take reasonable efforts  
28 to insure that their Trade Secrets remain secret by maintaining the information within the

1 SAFARI KID system as highly confidential and proprietary information and by not disclosing the  
2 information outside of the SAFARI KID system.

3 59. Defendants knew or had reason to know that: (a) the Trade Secrets were and are  
4 provided by Plaintiffs only to SAFARI KID franchisees; and (b) only SAFARI KID franchisees  
5 were and are allowed to access and use this information.

6 60. As a proximate result of Defendants' unauthorized use, possession, and  
7 misappropriation of Plaintiffs' Trade Secrets: (a) Plaintiffs have suffered actual damages; and (b)  
8 Defendants have been unjustly enriched through their enrollment and retention of students using  
9 Plaintiffs' Trade Secrets.

10 61. Defendants' unauthorized use of Plaintiffs' Trade Secrets has caused, and unless  
11 restrained and enjoined by this Court will continue to cause, substantial, immediate, and  
12 irreparable injury to Plaintiffs' business, reputation, and goodwill for which Plaintiffs have no  
13 adequate remedy at law.

14 62. Plaintiffs are informed and believe, and based thereon allege, that Defendants'  
15 actions and omissions were knowing, willful, and malicious in that Defendants misappropriated  
16 Plaintiffs' Trade Secrets with the deliberate intent to injure Plaintiffs' business and improve  
17 Defendants' business. Defendants' actions and omissions make this an exceptional case within the  
18 meaning of 15 U.S.C. § 1117. Plaintiffs are therefore entitled to punitive damages in an amount to  
19 be proven at trial. Plaintiffs are also entitled to reasonable attorney's fees.

20 WHEREFORE, Plaintiffs seek relief against Defendants as set forth below.

21 **SIXTH CLAIM FOR RELIEF**

22 **Breach of Contract**

23 **(By SKF Against All Defendants)**

24 63. Plaintiffs reallege and incorporate herein by this reference the allegations of  
25 paragraphs 1 through 26 above as though fully set forth below.

26 64. In April 2013, SKF and Defendants entered into an oral agreement (the "**Oral**  
27 **Contract**") whereby SKF agreed to allow Defendants to open a SAFARI KID franchise and to  
28 provide Defendants with training and materials to open a SAFARI KID franchise, and in

1 exchange Defendants agreed to operate a SAFARI KID franchise, to sign the SKF franchise  
 2 agreement within six months, to pay the Initial Fee to SKF after signing the agreement, and to  
 3 begin paying royalties to SKF as required under the SKF franchise agreement.

4 65. SKF has performed all conditions, covenants, and promises required on its part to  
 5 be performed in accordance with the terms and conditions of the Oral Contract.

6 66. On or about July 15, 2015, Defendants breached the Oral Contract by refusing to  
 7 sign the SKF franchise agreement after starting the franchise business, pay the Initial Fee required  
 8 to open and operate a SAFARI KID franchise, and pay royalties to SKF.

9 67. As a result of Defendants' breach of the Oral Contract, Plaintiffs have suffered  
 10 damages in an amount to be determined at trial.

11 WHEREFORE, Plaintiffs seek relief against Defendants as set forth below.

12 **SEVENTH CLAIM FOR RELIEF**

13 **Fraud Under California Civil Code § 1572**

14 **(By SKF Against All Defendants)**

15 68. Plaintiffs reallege and incorporate herein by this reference the allegations of  
 16 paragraphs 1 through 26 above as though fully set forth below.

17 69. In or about April 2013, Defendants represented to SKF that Defendants had agreed  
 18 to the terms of the SKF franchise agreement and agreed to open a SAFARI KID learning center in  
 19 San Diego, California under those terms.

20 70. On or about July 15, 2015, Defendants represented to SKF that Defendants were a  
 21 SAFARI KID franchisee, that Defendants would sign the SKF franchise agreement, that  
 22 Defendants would pay SKF the Initial Fee after signing the SKF franchise agreement, and that  
 23 Defendants would pay royalties to SKF as required by the SKF franchise agreement (together, the  
 24 "**Misrepresentations**").

25 71. The Misrepresentations were false when they were made by Defendants. The true  
 26 facts were that: (a) Defendants never intended to pay any monies to SKF; (b) Defendants intended  
 27 instead to obtain from Plaintiffs as much training, curricula, and information as possible regarding  
 28 how to operate a successful, competitive, learning center in California without compensating

1 SKF; and (c) Defendants planned to utilize the goodwill in the SAFARI KID brand and knowhow  
2 to launch a daycare and preschool learning center business without signing the SKF franchise  
3 agreement and without paying the Initial Fee or royalties to SKF.

4 72. When Defendants made their Misrepresentations to SKF, Defendants knew their  
5 Misrepresentations were false, and Defendants made their Misrepresentations with the intention  
6 to deceive and defraud SKF and to induce SKF to act in reliance on the Misrepresentations in the  
7 manner hereafter alleged or with the expectation that SKF would so act.

8 73. At the time Defendants communicated the Misrepresentations to SKF, and at the  
9 time SKF took the actions herein alleged, SKF was ignorant of the falsity of Defendants'  
10 Misrepresentations and reasonably believed them to be true. In reliance on Defendants'  
11 Misrepresentations, SKF was induced to and allowed Defendants to open a SAFARI KID  
12 franchise and provide Defendants with training and materials to open a successful SAFARI KID  
13 franchise. Had SKF known the true facts, SKF would not have taken such actions. The reliance  
14 by SKF on Defendants' Misrepresentations was justified because the true facts were only known  
15 by Defendants.

16 74. As a proximate result of the fraudulent actions and omissions of Defendants as  
17 herein alleged, SKF was induced to expend inordinate time and energy helping Defendants  
18 acquire property to conduct their SAFARI KID franchise and provide to Defendants the highly  
19 confidential and proprietary Trade Secrets intended to be available only to franchisees within  
20 Plaintiffs' SAFARI KID system in order to advise and train Defendants as to how to acquire and  
21 retain students and operate a successful SAFARI KID franchise. Nonetheless, SKF has not  
22 received any profit or other compensation from Defendants. SKF has been damaged by its  
23 justifiable reliance on Defendants' Misrepresentations, actions, and omissions in an amount to be  
24 proven at trial.

25 75. Defendants' actions and omissions: (a) constituted an intentional course of  
26 misrepresentation, deceit, and/or concealment of material facts known to Defendants with the  
27 intention on the part of Defendants to cause injury to the business, reputation, and goodwill of  
28 SKF; and (b) was despicable conduct subjecting SKF to a cruel and unjust hardship in conscious

disregard of SKF's rights, so as to justify an award of exemplary and punitive damages.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

1. For a permanent injunction restraining Defendants, their officers, agents, servants, employees, representatives, attorneys, assigns and all other persons in active concert or participation with them from:

(a) Using the SAFARI KID mark, or any trademark or service mark that is confusingly similar to the SAFARI KID mark, as the whole or any part of a business name in connection with preschool and daycare services;

(b) Using the SAFARI KID mark, or any trademark or service mark that is confusingly similar to the SAFARI KID mark, in connection with the advertising, sale, or promotion of preschool and daycare services or any services related thereto;

(c) Holding out in any manner whatsoever that Defendants or Defendants' goods and/or services are in any way sponsored by, associated with, connected to, or affiliated with Plaintiffs or Plaintiffs' SAFARI KID franchise system; and

(d) Using any proprietary, confidential, and trade secret information provided by or related to Plaintiffs' SAFARI KID franchise system;

2. That Defendants be directed to deliver to Plaintiffs during the pendency of this action, and for subsequent destruction at the conclusion of this action, all materials of any nature whatsoever bearing the SAFARI KID mark, or any trademark or service mark that is confusingly similar to the SAFARI KID mark, or any reproductions or imitation of the SAFARI KID mark, pursuant to 15 U.S.C. § 1118;

3. That Defendants be required to make an accounting to Plaintiffs and be directed to pay over to Plaintiffs all gains, profits, and advantages realized by Defendants from the advertisement and/or sale of goods and/or services bearing the infringing designation, pursuant to 15 U.S.C. § 1117 and California Business & Professions Code § 17200 et seq.;

4. That Defendants be directed to pay to Plaintiffs all damages suffered by Plaintiffs,

1 pursuant to 15 U.S.C. § 1117;

2 5. That Defendants be directed to pay Plaintiffs' reasonable attorney's fees and all  
3 costs connected with this action, pursuant to 15 U.S.C. § 1117;

4 6. That Defendants be directed to pay to Plaintiffs prejudgment interest at the  
5 maximum rate permitted by law;

6 7. That Defendants be directed to transfer ownership and control of the  
7 safarikidschool.com domain name to Plaintiffs;

8 8. That Defendants be directed to pay to SKF compensatory damages according to  
9 proof;

10 9. That Defendants be directed to pay to Plaintiffs punitive damages in an amount to  
11 be determined at trial; and

12 10. For such other and further relief as the Court may deem just and proper.

13  
14 Dated: December 14, 2015

DONAHUE FITZGERALD LLP

15  
16 By: 

17 Eric A. Handler  
18 Attorneys for Plaintiffs  
19 SAFARI KID INC. and SAFARI KID  
20 FRANCHISING LLC

21 **DEMAND FOR JURY TRIAL**

22 Pursuant to Fed. R. Civ. Pro. 38(b) and Federal CRC 3-6, Plaintiff demands a jury trial.

23 Dated: December 14, 2015

DONAHUE FITZGERALD LLP

24 By: 

25 Eric A. Handler  
26 Attorneys for Plaintiffs  
27 SAFARI KID INC. and SAFARI KID  
28 FRANCHISING LLC